

Complaint

Mr G complains that Blue Motor Finance Ltd (“BMF”) unfairly entered into a hire purchase agreement with him. He’s said the monthly payments were unaffordable and he struggled to meet the repayments.

Background

In June 2017, BMF provided Mr G with finance for a used car. The cash price of the vehicle was £8,960.00. Mr G paid a deposit of £50 and applied for finance to cover the remaining £8,910.00 he needed to complete the purchase. BMF accepted his application and entered into a hire purchase agreement with him.

The hire purchase agreement had a term of 49 months, interest, fees and total charges of £1,797.25 (made up of interest of £1,422.00, a credit acceptance (A) fee of £215.25, a credit acceptance (B) fee of £150 and an option to purchase fee of £10) and the total amount to be repaid of £10,707.25 (not including Mr G’s deposit) was due to be repaid in 48 monthly instalments of £215.25 followed by a final monthly payment of £365.25.

In June 2023, Mr G complained that the payments to this hire purchase agreement were unaffordable and so the finance should never have been provided to him. BMF looked at the complaint and didn’t uphold it. BMF said that the checks it completed before it entered into the agreement confirmed that the finance was affordable and so it was reasonable to lend.

Mr G’s complaint was considered by one of our investigators. She thought that reasonable and proportionate checks ought to have led BMF to realise that it shouldn’t have lent to Mr G. So she recommended that Mr G’s complaint should be upheld.

BMF disagreed with our investigator and the complaint was passed to an ombudsman for review.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr G’s complaint.

Having carefully thought about everything I’ve been provided with, I’m upholding Mr G’s complaint and directing BMF to pay him compensation. I’ll explain why in a little more detail.

BMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that BMF needed to carry out proportionate checks to be able to understand whether Mr G could make his payments in a sustainable manner before agreeing to lend to him. And if the checks BMF carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Were the checks that BMF carried out before lending to Mr G reasonable and proportionate?

BMF says it agreed to Mr G's application after it used a credit reference agency to check creditworthiness and apply an affordability score. As part of this assessment, BMF says it considered things like Mr G's credit card debt and utilisation, whether he had an excessive debt to income exposure, whether multiple recent credit searches were carried out on him, or he had made multiple recent applications for credit. It says the information it gathered showed Mr G was within its lending parameters and the application was accepted.

I've thought about what BMF has said. But, in truth, despite having been asked for this information on a number of occasions, BMF hasn't been able to provide the specifics of what it learnt about Mr G or the actual data it relied upon to determine that the payments to this agreement were affordable for him.

Indeed, the copy of the credit search results provided do not even show the outstanding balances Mr G had at the time, let alone what information was considered against the criteria BMF has set out. So I don't actually know what it was that BMF relied upon to reach the conclusion that this agreement was affordable for Mr G.

In these circumstances, I'm not prepared to accept that the checks BMF carried out in this instance were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to BMF that Mr G was unable to sustainably make the monthly repayments to his hire purchase agreement?

As proportionate checks weren't carried out before BMF entered into this agreement with Mr G, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told BMF that it was unfair to enter into this agreement with Mr G.

Mr G has provided us with evidence of his financial circumstances at the time he applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mr G has provided, it doesn't mean it would've shown up in any checks BMF might've carried out.

But in the absence of anything else from BMF showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr G's financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Mr G's bank statements and the other information he's provided because I think that BMF ought to have obtained this before lending to him.

I've consulted this information because BMF hasn't provided anything at all to back up its assertions that the agreement was affordable for Mr G and the bank statements are not only readily available at this stage, they also happen to contain the information I now need to

reconstruct the proportionate check BMF should have carried out and which it has failed to evidence doing.

Mr G's bank statements show that he was receiving around £1,100.00 to £1,200.00 each month. However, it's clear that his rent and normal monthly living costs took up a significant proportion of his salary. When these payments are combined with what Mr G was paying towards his credit commitments and then deducted from his salary, it is clear that he didn't have much left over. And that is why he was consistently and persistently overdrawn.

Given what I've been provided with indicates Mr G was already struggling to meet his existing commitments, I'm satisfied that Mr G simply wasn't in a position to make the monthly payments to this agreement. This especially as he would also incur other reasonable associated running costs for the vehicle such as petrol, tax and insurance.

I'm satisfied that the available evidence indicates that it is more likely than not that Mr G simply didn't have the funds necessary to make the monthly payments to this agreement, without him borrowing further or it having a significant adverse impact on his financial position.

So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted BMF to the fact that Mr G wasn't in a position to sustainably make the payments to this agreement. And it therefore follows that I find that Mr G wasn't in a position to take on this commitment, BMF shouldn't have lent to him and that it now ought to put things right.

In reaching my conclusions, I've also considered whether the lending relationship between BMF and Mr G might have been unfair to Mr G under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct BMF to do below results in fair compensation for Mr G given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Finally, and for the sake of completeness, I should explain that I've noted that Mr G has also complained about the commission BMF paid to his motor dealer. He says that this was not disclosed to him and in breach of the rules, regulations as well as BMF's obligations.

However, what I'm directing BMF to do to put things right for Mr G effectively places him in the position he would now be in had his hire-purchase agreement never existed. I'm therefore satisfied that this unwinds the impact of any commission that BMF might have paid to the motor dealer for introducing Mr G.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't, in any event, make a difference to the overall outcome.

Fair compensation – what BMF needs to do to put things right for Mr G

The information I've been provided with indicates that Mr G's finance agreement has already been settled. As this is the case, I'm satisfied that it would be fair and reasonable in all the circumstances of the case for BMF to put things right for Mr G by:

- refunding any and all interest, fees and charges he paid as a result of this agreement;

- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr G to the date of settlement†
- removing any and all adverse information it may have recorded on Mr G's credit file as a result of this agreement.

† HM Revenue & Customs requires BMF to take off tax from this interest. BMF must give Mr G a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr G's complaint. Blue Motor Finance Ltd should put things right for Mr G in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 November 2024.

Jeshen Narayanan
Ombudsman